

January 20, 2014

Mathew G. Jacobs
General Counsel
Legal Office
P.O. Box 942707
Sacramento, CA 94229-2707

Re: Your Request for Advice
Our File No. A-14-211

Dear Mr. Jacobs:

This letter responds to your request for advice regarding gift provisions of the Political Reform Act (the “Act”).¹

QUESTIONS

1. In cases where CalPERS pays for employees to attend a conference, are meals and refreshments available to all such attendees at the conference exempt from gift reporting? Does the fact that meals and refreshments are listed with a nominal sponsor on the conference agenda change the conclusion?

2. Is free food provided separate and apart from the conference considered gifts to CalPERS employees?

3. Do delayed payments for a conference, which includes meals, result in a reportable gift to the official attending the conference on CalPERS behalf, such that staff will need to report the meals as gifts on their Form 700?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSIONS

1. In the case where CalPERS pays for admission that includes meals, no gift occurs. The fact that CalPERS then makes these benefits of admission to the conference available to attendee employees is a nonreportable event. This is true whether a “sponsor” for the food is listed or not.

2. While free food provided to all individuals attending the conference would not be restricted or treated as a gift to the employee, food received outside the conference is a gift unless the payments would otherwise meet the requirements of Regulation 18950.1.

3. Generally, in order to negate the receipt of a gift by an official the Act requires that one of the actions listed in Regulation 18941(c) be performed within 30 days of receipt. However, in a case where an agency purchases goods or services to be used by the employee, the employee does not receive a gift, and the date that payment is actually made to the vendor does not affect that fact.

FACTS

CalPERS is a public pension fund responsible for managing approximately \$296 billion in assets on behalf of 1.6 million members and beneficiaries. CalPERS staff regularly attends conferences to remain informed about developments in benefit and investment matters. The rates charged to attend these conferences vary from several thousand dollars to free admission. As a government agency and the administrator of a public pension plan, CalPERS staff is often afforded the opportunity to attend conferences at a reduced rate (e.g., CalPERS is often offered an Institutional Investor² or ‘Plan Sponsor’ rate²). At other times, it is offered a “government” rate.

Separately, these conferences frequently include third-party sponsorship of meals or refreshments during individual sessions. Examples include small refreshment breaks, luncheons/dinners that may accompany a keynote speaker, and networking receptions. These meals and refreshments may be provided directly by a third-party sponsor or indirectly through a third-party sponsorship paid to the conference host, which may reduce the overall cost of a conference. Unlike meals and refreshments that are listed on a conference agenda without an affiliated sponsor, CalPERS, out of an abundance of caution, treats nominally-sponsored meals and refreshments as a gift from the named sponsor.

This interpretation did not create an issue for CalPERS in the past as sponsored events were normally ancillary to the conference itself and were generally avoided by CalPERS staff.

² You noted that “institutional investor” generally refers to a large organization that makes substantial investments and typically would include insurance companies, mutual funds, investment banks and firms, endowments, and private and public pension funds. “Plan sponsor” generally refers to any entity that sets up a healthcare or retirement plan for the benefit of the entity’s employees.

However, as more and more conference hosts have now expanded their use of sponsorships, the frequency of conference meals that are nominally sponsored has been increasing. As noted in the conference agenda accompanying this request for advice, it is not uncommon for some, if not all, meals and refreshments provided at a conference to be listed as sponsored by a third party.

In addition, while CalPERS staff typically makes arrangement to pay for a conference, there are occasions when payment for the conference, which includes meals and beverages, may not be sent within 30 days of the conference. You seek clarification as to whether the delayed payment constitutes a failure of consideration such that the meals accepted at the conference would now be considered gifts. In other words, is it necessary for the staff member to report a gift because of CalPERS' failure to pay a conference fee within 30 days after the staff attended the conference?

ANALYSIS

A gift is defined under Section 82028(a) as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status."

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$460 from a single source in a calendar year. (Section 89503; Regulation 18940.2.)
- Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on designated employees requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. (Sections 82030; 87302.)
- Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$460 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 & 87103(e); Regulations 18700 & 18703.4.)

1. In cases where CalPERS pays for employees to attend a conference, are meals and refreshments available to all such attendees at the conference exempt from gift reporting? Does the fact that meals and refreshments are listed with a nominal sponsor on the conference agenda change the conclusion?

In cases where CalPERS purchases an admission to a conference, CalPERS has purchased the access to the conference and everything included in the admission fee. Similar to where CalPERS enters into a contract to purchase goods and training for its employees, CalPERS will have purchased these benefits and can use them in any way it deems fit. Generally, reimbursement for expenses or per diem received from a state, local, or federal government agency are exempt from both the gift and income definitions in the Act. (Section 82030(b)(2).)

2. Is free food provided separate and apart from the conference considered gifts to CalPERS employees?

While free food provided to all individuals attending the conference as part of the admission would not be restricted or treated as a gift to the employee, food received outside that included with the conference fee is a gift unless an exception applies.

Rebates or Discounts in the Price of Anything of Value Made on the Regular Course of Business to Members of the Public Without Regard to Official Status. You ask specifically about the gift exception for rebates or discounts in the price of anything of value made in the regular course of business to members of the public without regard to official status. (Section 82028.) Shortly after the Act was passed, the Commission interpreted the statutory exception in Section 82028 in connection with a discount offered by the Holiday Inn to all state employees, concluding that the Act does not impose any gift restrictions or gift reporting requirements on those who offer such discounts, or on public officials who take advantage of such discounts, so long as the discount is uniformly offered to all state employees. (*In re Russell* (1975) 1 FPPC Ops. 191; see also the *LaMar-Haas* Advice Letter, No. A-04-003.) In the opinion, the Commission stated:

“[M]any discounts are offered to all members of the public and do not create any potential for improper influence. Requiring the disclosure of all discounts would impose burdensome reporting requirements without serving a legitimate public purpose. Consequently, the statutory definition of ‘income’ excludes discounts [that] are made available to members of the public without regard to their official status.”

The Commission further determined that:

“The statutory language does not require that the discount be made available to ‘all’ members of the public, but implies that the discount will be offered on a uniform basis to a diverse group. [Here] the discount is made available to all employees of the State of California. This group is a large and heterogeneous assortment of individuals ... Because of the size and diversity of the class, we conclude that a discount available to all state employees is a discount made ‘available to members of the public.’”

Since the Commission's opinion in *Russell*, we have advised that a discount "made available to members of the public without regard to their official status" includes: all county employees (*Abbott* Advice Letter, No. A-88-049); all city employees (*Cornelius* Advice Letter, No. I-92-260); and all district employees (*Schechtman* Advice Letter, No. A-96-218). More recently, we advised in the *Lamar-Haas* Advice Letter, *supra*, that discounts offered by Disneyland to "emergency personnel in every government sector" also fit the criteria of a discount "made available to members of the public without regard to their official status." There, although the discount was offered to a certain class of employees rather than all employees of a state, county, city, or district, we found that "the number of fire fighter, law enforcement and rescue personnel employed in the entire State of California is large enough in size to represent a discount made available to the public as contemplated by the *Russell* opinion."

In contrast to the examples above, the conference in question is geared toward a very narrow and discrete segment of the businesses, as well as a correspondingly discrete segment of public officials. This discount would not be offered to a diverse or heterogeneous assortment of individuals. Thus, the admission and meals would not be considered a discount made available to members of the public without regard to their official status.

Exception for Gifts to Agency: In Regulation 18950.1, the Commission identified certain payments that do not confer a personal benefit on the official and do not constitute gifts or income to an official because of the nature in which the payments are made. Regulation 18950.1 applies solely to travel payments, including food and beverages that meet all of the following requirements:

(1) The payment must be made directly to or coordinated with the government employer. (Regulation 18950.1(a)(1) and (b).)

(2) The payment must be used for official agency business. (Regulation 18950.1(a)(2) and (c).)

(3) The government employer must determine the official who will make use of the payment. (Regulation 18950.1(a)(3) and (d).)

(4) The payment must not provide a personal benefit to the official who makes use of the payment. (Regulation 18950.1(a)(4) and (e).)

(5) The duration of the travel is limited to that necessary to accomplish the purposes for which the travel was provided as determined by the governmental employer using the same standards imposed for travel paid with government funds. (Regulation 18950.1(a)(5).)

(6) The government employer must report the payment as specified in Regulation 18950.1(f).

Because these meals are provided outside the conference the employees are attending, they are not considered to be made for official agency business. Absent an exception, these meals would be gifts.

3. Delayed payments for a conference, which includes meals to be used by employees.

CalPERS like other public agencies many times pays for their staff to attend conferences. These conferences may include meals to be used by employees. We have already advised above that meals included in a conference admission generally do not result in gifts to the employees that receive them.

You asked whether delayed payment for a conference, which includes meals, results in a reportable gift to the official attending the conference on CalPERS behalf. However, in a case where an agency purchases goods or services to be used by the employee, the date that payment is actually made to the vendor does not affect the fact that the employee has not received a gift.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace
Assistant General Counsel
Legal Division

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